

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE:	:	CHAPTER THIRTEEN
	:	
DAVID WOLFE COATES, JR.	:	BANKRUPTCY NO.: 5-17-bk-00481-JJT
MARGARET FESSESSEY COATES,	:	<u>{Nature of Proceeding:</u> Objection to
	:	First Amended Chapter 13 Plan
DEBTORS	:	(Doc. #42)}

OPINION

An Objection has been filed to the Chapter 13 plan of David and Margaret Coates by Hans Jurgen Meuser and Manfred Kissel, Objectors. While no evidence was offered at the confirmation hearing nor briefs filed in support of their respective positions, there were some relevant facts alleged that do not appear to be in dispute. The Debtors and Objectors are parties to an agreement to convey an easement to Debtors in property in Puerto Rico originally owned by Objectors. A copy of the Agreement is attached to the Objectors' proof of claim. Claim No. 11. The Debtors' plan attempts to modify the terms of that agreement.

If this is an executory contract, a debtor would not be allowed to modify its terms. *Sharon Steel Corp. v. Nat'l Fuel Gas Distribution Corp.*, 872 F.2d 36, 40 (3rd Cir. 1989)(citing *In re Italian Cook Oil Corp.*, 190 F.2d 994, 997 (3rd Cir. 1951)(debtor must assume contract *cum onere*)). Debtors' choices would be to assume, reject, or assign. 11 U.S.C. § 1322(b)(7). The proof of claim, however, suggests that the court with jurisdiction over the real estate, the Puerto Rican Court, has issued a decree of specific performance. Such an order may terminate the executory nature of the contract. See, *In re Smith*, 269 B.R. 629, 632 (Bankr. E.D.Tex. 2001), *In re Pribonic*, 70 B.R. 596, 601 (Bankr. W.D.Pa. 1987). Regardless, while the Debtors

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may attempt to disregard the order of specific performance or, alternatively, assume or reject the agreement, they certainly have no authority to modify its terms as they have attempted to do so in this plan. For these reasons, the Objection must be sustained.

My Order will follow.

By the Court,

A handwritten signature in black ink, appearing to read "John J. Thomas", written over a horizontal line.

John J. Thomas, Bankruptcy Judge
(CMP)

Date: December 20, 2017